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Supreme Court, U.S.
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UNITED STATES SUPREME COURT

OCTOBER TERM, 1986

CARL B. BRANSON,

APPELLANT

V.

CORA NORTHINGTON, PRESCOTT BERRY,
ROGER STEELE, ROSCOE EGGER,
GTE COMMUNICATION SYSTEMS CORP.,
MARY A. TICHY,
UNITED STATES OF AMERICA,

APPELLEES

APPEAL FROM THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

JURISDICTIONAL STATEMENT

NO COUNSEL OF RECORD
CARL B. BRANSON
IN PROPRIA PERSONA
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(602) 993-9462

QUESTIONS PRESENTED

All questions to be presented to this Court are grounded in the premise that a penal exaction may not be collected unless one of two conditions is first met: 1) the claim is proved on its merits in a hearing before an impartial tribunal, or 2) a plea of "guilty as charged" is voluntarily entered by the accused.

I

SOURCE OF AUTHORITY FOR 26 USC 6702

Do the provisions of 26 USC 6702 originate in the valid authority of Congress to raise revenue or in the valid authority to punish wrongdoers?

Claims of Liability under this statute were issued on Department of the Treasury stationery on or about August 13, 1984 and again November 12, 1984 against this Appellant.

II

APPLICATION OF 26 USC 6703

Does 26 USC 6703 grant unrestrained authority to collect any part of the amount alleged owing under 26 USC 6702 without a warrant, prior hearing or voluntary admission of guilt? Does 26 USC 6703(c) mandate partial payment of the amount specified in 26 USC 6702 before a hearing may be had, or, does it embody a waiver of sovereign immunity? Has this Appellant waived his right to notice, defense, hearing and judgement prior to collection?

This Appellant disallowed the claim advanced by the Department of the Treasury by service of a Notice recorded in the Official Records of Maricopa County, Arizona; demanded due process by hearing pursuant to 26 USC 6703(a) and refused to make even a partial payment of the alleged liability because of these questions.

III

COLLECTION PROVISIONS

26 USC 6703 AND 26 USC 6671

Does 26 USC 6703 or 26 USC 6671(a) have controlling weight in determining the collection process of amounts allegedly due under 26 USC 6702?

The Ninth Circuit Court of Appeals memorandum judgment appears to grant controlling weight to 26 USC 6671(a). This Appellant disagrees.

IV

JURISDICTIONAL LIMITATIONS

OF 26 USC 6331

Do the provisions of 26 USC 6331(a) permitting collection by mere notice provide more than the "express congressional authorization" to exercise set off as required in the opinions of the Comptroller General (26 Comp. Gen. 907) and this Court in SMITH v. JACKSON, 246 U.S. 388? To what extent, if any, do the

provisions of 26 USC 6331(b) embody the provisions of predecessor statutes 26 USC 3690, 26 USC 3692, and 26 USC 3710 which required a warrant for distraint to effect collection? And, which provision or embodied rule of law is controlling with respect to this Appellant?

On or about April 29, 1985, Respondent Cora Northington signed and subsequently served "Notice of Levy" on Respondents GTE Communication Systems Corp. (GTECSC) and Mary A. Tichy. Said notice was executed by Respondents GTECSC and Tichy against the debt GTECSC owed this Appelant as if it were a writ of distress, writ of garnishment, or warrant for distraint, although no other process accompanied the "Notice of Levy".

V

IMMUNITY

Does 26 USC 7423 and the immunity doctrine grant absolute immunity to

Department of the Treasury personnel? And, does 26 USC 6332(d) grant absolute immunity to all individuals acting at the request of Department of the Treasury personnel?

District Court summarily denied all of this Appellant's motions which addressed this topic and dismissed the action citing the immunity doctrine and these statutes; the Circuit Court Affirmed.

VI

CONSTITUTIONAL RIGHTS

Do the various due process provisions of the Constitution apply only to criminal actions, or do they apply to any actions initiated under the banner of government?

As of the date of this writing, no impartial review on the merits of the claim advanced by the Department of the Treasury has been had or initiated, yet the full amount allegedly owing has been collected through the combined actions of

the Respondents in this suit.

VII

FEDERAL RULES OF PROCEDURE

Is the discretionary latitude of Rule 54 governed by the circumstances and substantive rights of the litigants or by the forms and filings?

The Ninth Circuit Court of Appeals denied itself jurisdiction over Respondents GTE Communication Systems Corp. and Mary A. Tichy since the District Court did not issue a certificate pursuant to Rule 54 and did not indicate in any other manner that the order and judgment appealled from terminated the litigation. The District Court entered an order dismissing GTECSC and Tichy after the District Court Record was certified to the Ninth Circuit Court Clerk with the notation "CLOSED" on the docket sheet.

VIII

DAMAGES

Are monetary damages appropriate as compensation for the violation of constitutionally guaranteed rights?

IX

28 USC 2463 JURISDICTION

Are the funds presently in the possession of the United States Treasury subject to the orders and judgements of this Court?

The United States Treasury is still in possession of the funds acquired through the actions of the Respondents in this suit.

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I

PRIOR DECISIONS

The decision of the Ninth Circuit Court of Appeals was an unreported opinion for appeal number 86-1786, filed by the Clerk of the Court on January 7, 1987.

The decision of the District Court for the District of Arizona was an unreported decision for case number CIV85-1451PHX-RGS, signed by Honorable Judge Strand on December 30, 1985 and filed by the Clerk of the Court on January 2, 1986.

II

BASIS OF JURISDICTION

This suit is a damage recovery action for violation of constitutionally guaranteed rights, similar to BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 U.S. 388 (1971); jurisdiction being granted by judicial expansion of 42 USC 1981. Additionally,

recovery is sought under 28 USC 2463 for property taken or detained under any revenue law of the United States which is not repleviable; RAFFAELE v. GRANGER, 196 F.2d 620, 623 (1952).

Appellate jurisdiction in this matter is conferred on this Court by the Constitution of the United States Article III, Section 2, and also by 28 USC 2101.

The decision of the Ninth Circuit Court of Appeals was filed by the Clerk of that Court on January 7, 1987; Notice of Appeal was mailed to the Clerk of the Court of Appeals on February 5, 1987.

III

CONTROLLING LAW

The constitutional and statutory provisions involved in this case are set out verbatim in the Appendix.

The relevant provisions of the Constitution which shall be relied upon are: Article I, Section 6, clause 1 and 2,

Article I, Section 8, clause 17 and 18, Article I, Section 9, clause 7, Article I, Section 10, clause 1; Amendment IV, Amendment V, and Amendment IX.

The relevant statutory provisions which shall be relied upon are: United States Codified Statutes, Title 26, Section 6702, Section 6703, Section 6331, Section 6332, Section 6671, Section 7421, and Section 7423; also, 26 USC 3690, 26 USC 3692, and 26 USC 3710 which are predecessors to 26 USC 6331.

Additionally, the provisions and purpose of Rule 54, Federal Rules of Civil Procedure will have relevance in this appeal.

IV

STATEMENT OF THE CASE

The facts in this case are simple and uncontested.

On or about August 13, 1984 and again on or about November 12, 1984 unsigned

claims were advanced against this Appellant on Department of the Treasury stationery alleging liability under the auspices of the "Frivolous Return Penalty" statute, 26 USC 6702. On or about September 11, 1984, October 10, 1984 and December 19, 1984 notices were filed with the Maricopa County Recorder's Office disallowing the claims advanced in August and November and demanding that Department of the Treasury personnel accept the burden of proof required by 26 USC 6703(a) to substantiate the allegations. Copies of these notices were served on Appellees and others, except Tichy, by mailing same on September 15, 1984, October 13, 1984 and December 31, 1984. Appellee Tichy was personally served copies of the September and October notices on April 9, 1985. This sequence of events occasioned the first instance of questioning the procedural requirements of 26 USC 6703.

On or about April 29, 1985 Appellee Northington prepared, signed and subsequently served "Notice of Levy", form 668-A(Rev. 12-82), on Appellees GTECSC and Tichy.

Appellee GTECSC and Tichy executed the "Notice of Levy" as if it were a writ of garnishment, writ of distress or warrant for distraint by withholding a portion of the compensation due this Appellant. Appellees GTECSC and Tichy continued the withholding until the full amount shown on the face of the "Notice of Levy" was withheld.

This suit was filed in the District Court for the District of Phoenix on June 10, 1985.

The questions presented to this Court regarding statutory provisions 26 USC 6702, 26 USC 6703, and 26 USC 6331 were presented in argument on motion before the District Court and again in briefing

before the Court of Appeals. The District Court summarily denied the motion without comment on the merits. Similarly, the questions regarding damages, the immunity doctrine, and constitutional rights were presented in argument on motion before the District Court and summarily denied without comment. The Circuit Court affirmed.

The question regarding Rule 54, Federal Rules of Civil Procedure, was raised by Appellees GTECSC and Tichy in their responsive brief before the Court of Appeals. The Court of Appeals exercised its discretion to excuse these Appellees from the appeal.

The question regarding 26 USC 6671 was first presented by the Federal Appellees in their brief before the Court of Appeals. The Court of Appeals granted controlling weight to 26 USC 6671.

V

JUSTIFICATION FOR REVIEW

The Constitution of the United States and the Supreme Court have never permitted the forcible exaction of a penalty unless one of two conditions is met: either 1) a voluntary admission of guilt is advanced by the accused, or 2) a hearing on the merits has determined the guilt of the accused. Neither of these conditions have been met for this Appellant, giving rise to the claim of violation of rights guaranteed by the Constitution.

The decision of the Supreme Court in MARBURY v. MADISON, 5 U.S. 368 (1803), to reserve to itself the right to review governmental actions with respect to the provisions of the Constitution achieved its full exposition in BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 U.S. 388 (1971). This present suit, much like BIVENS, challenges

the actions of individuals claiming to be acting under the authority of government office. That is, this Court must determine if the actions of the Appellees are consistent with the intent of the statutes invoked; statutes which are professedly in harmony with the Constitution of the United States.

> The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. Its benefits can be retained only by sustained combat. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person. MCALLISTER v. HENKEL, 201 U.S. 90, 26 S.Ct. 385, 50 L.Ed. 671; COMMONWEALTH v. SHAW, 4 Cush. 594, 50 Am.Dec. 313; ORUM v. STATE, 38 Ohio App. 171, 175 N.E. 876. The one who is persuaded by honeyed words or moral suasion to testify or produce documents rather than make a last ditch stand, simply loses the protection.
> UNITED STATES v. JOHNSON, 76 F. Supp. 538, 540-541 (1947)

Although there is no material question of self-incrimination in this

suit, the same principle undoubtedly holds true with respect to any right guaranteed by the Constitution. This suit constitutes the "last ditch stand" to claim due process rights by the "belligerent claimant in person" referenced by Honorable Judge Fee.

Of the provisions of 26 USC 6703, one paragraph specifies the requisite protections guaranteed by the Constitution; another paragraph contains the required waiver of sovereign immunity for suits against the government; the operational boundaries of these statutory provisions must be clearly marked to achieve the proper balance between individual freedoms and governmental efficacy. A determination as to which clause is controlling with respect to this Appellant must be had. This is a task that the District and Appellate Courts have refused to accept, to the detriment of

this Appellant.

Additionally, this is the first suit known to this Appellant where the claim made pursuant to 26 USC 6702 has not been challenged under the provisions of 26 USC 6703(c); thereby giving this Court its first opportunity to distinguish between the procedures required pursuant to 26 USC 6703(a) and procedures required pursuant to 26 USC 6703(c).

Application of the provisions of 26 USC 6331 to this Appellant requires that the Court revisit SIMS v. UNITED STATES, 359 U.S. 108 (1959), with deference to SMITH v. JACKSON, 246 U.S. 388 (1918), Opinion B-66501 of the Comptroller General, 26 Comp. Gen. 907 (1947), the rule of set off, and the rule of distraint. The applicability of the narrow exemption to collection by distraint created by the concurrent application of REGAL DRUG CORP. v. WARDELL, 260 U.S. 386

(1922), HILL v. WALLACE, 259 U.S. 44 (1922), LIPKE v. LEDERER, 259 U.S. 557 (1922), and GRAHAM v. DUPONT, 262 U.S. 234 (1923) must also be considered. Only the Supreme Court is competent to clarify the intent of its precedents with respect to the Constitution and rules of the Common Law.

In addition, there is disagreement between the Circuit courts regarding the necessity of a warrant for distraint under the predecessor statutes to 26 USC 6331; again, only the Supreme Court is competent to resolve such disagreement and determine if the case law is still applicable to the successor statute.

The immunity doctrine as applied by the District Court and affirmed by the Appellate Court appears to be in direct conflict with Supreme Court precedent on the subject. The resolution of the immunity issue is fully dependent upon the

determination of the applicability of the collection statutes invoked.

The provisions of 28 USC 2463 grant the equivalent of the Common Law rule of replevin. Thus, the validity of the claim advanced by the government personnel need not be addressed to establish entitlement to the funds presently in the hands of the Department of the Treasury.

This Appellant alleges that the Court of Appeals abused its discretion in waiving jurisdiction over Appellees GTECSC and Tichy. The intent and purpose of Rule 54 in conjunction with the factual circumstances of this suit will bear out this allegation.

Dated this 21th day of March, 1987

Respectfully Submitted

Carl B. Branson

Carl B. Branson
In Propria Persona

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CARL B. BRANSON,

Plaintiff,

vs.

CORA NORTHINGTON, et.al.

Defendants.

ORDER

CIV 85-1451PHX-RGS

The plaintiff (Branson) has brought this action asking for injunctive and other relief from the named defendants(one of whom is the United States). This action arose out of an Internal Revenue Service levy to collect unpaid taxes. Defendant GTE Communication Systems Corp.(GTE) is the plaintiff's employer. Defendant Mary Tichy also works for GTE and was responsible for the actual levy against

Branson. The other defendants are all various officials of the Internal Revenue Service.

The IRS garnished Branson's salary after he failed to pay taxes due. Branson then filed this action contesting the applicability and constitutionality of the IRS levy statute, 26 U.S.C 6331. Branson filed several other motions including one entitled "Motion for Judicial Determination of Applicability of 26 U.S.C. 7421". This motion refers to the statute prohibiting lawsuits to restrain any assessment or collection of taxes except under limited circumstances. The government has filed a motion to dismiss citing this statute, the anti-injunction act and immunity.

26 U.S.C. 7421 states ". . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person,

whether or not such is the person against whom such tax was assessed." The exceptions allow suits in limited circumstances such as actions to contest the sale of property by other than the taxpayer who must pay the levy (26 U.S.C. 7426), deficiency actions after the payment of tax (26 U.S.C. 6212, 6213), penalty suit with bond (26 U.S.C. 6672), or judicial review of IRS assessment (26 U.S.C. 7429). Branson cannot show that he falls under any of these exceptions. The plaintiffs suit then is barred by 26 U.S.C. 7421.

Furthermore the constitutionality of the IRS summary levy procedures have been uniformly upheld. G.M. Leasing Corp. v. United States, 429 U.S. 338, 352 n. 18, 97 S.Ct. 619, 628 n. 18, 50 L.Ed. 530 (1977). Myers v. United States, 647 F.2d 591, 601 (5th Cir. 1981). Branson's complaint therefore fails to state a claim

for which relief can be granted.

Therefore,

IT IS ORDERED that the federal defendants motion to dismiss is granted.

IT IS FURTHER ORDERED that the plaintiff's Motion for Temporary restraining Order, Motion for Judicial Determination of Applicability of 26 U.S.C. 6331, Cross-Motion in Opposition to Federal Respondent's Motion to Dismiss, Motion for Judicial Applicability of 26 U.S.C. 7421, Motion for Judicial Determination of Immunity of Federal Respondents and Motion for Judicial Determination of Damages are denied.

DATED this 30th day of December, 1985.

Hon. Roger G. Strand
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CARL B. BRANSON,

Plaintiff,

vs.

CORA NORTHINGTON, et.al.

Defendants.

ORDER

CIV 85-1451PHX-RGS

The defendants, Mary Tichy and GTE Communications Systems Corp., have come before this court on a Motion to Dismiss under F.R.Civ.P. 12(b)(6). The plaintiff has brought this lawsuit contesting the defendants' role in the honoring of a tax levy issued by the IRS under 26 U.S.C. 6331 against the plaintiff. This suit originally included the United States, the Internal Revenue Service and various

officials, but the court dismissed them in an order of December 30, 1985.

GTE and Tichy are also entitled to a dismissal with predudice. 26 U.S.C. 6332(d) holds that a person who honors a tax levy issued by the IRS will be discharged from any obligation or liability to a delinquent taxpayer with regards to the property surrendered. This immunity has been upheld. The plaintiff objects to the dismissal on the grounds that the notice of levy was not under seal nor had any other authenticating marks. The statute authorizing the levy procedure, 26 U.S.C. 6331, does not authorize the use of a seal or any authenticating marks. Furthermore, the defendant has not shown any fraud perptuated by this particular tax levy. GTE and Tichy are protected by Section 6332.

THEREFORE, IT IS ORDERED that the

action be dismissed against Defendants GTE and Mary Tichy with prejudice.

DATED this 6th day of March, 1986.

Hon. Roger G. Strand
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CARL B. BRANSON,

Plaintiff,

vs.

CORA NORTHINGTON, et.al.

Defendants.

JUDGMENT

CIV 85-1451PHX-RGS

This action came on for consideration before the Court, the Honorable Roger G. Strand, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the petitioner take nothing and the action is hereby dismissed.

Dated at Phoenix, Arizona, this 2nd day of January, 1986.

Richard H. Weare, Clerk

DISTRICT OF ARIZONA

CARL B. BRANSON,

Plaintiff,

vs.

CORA NORTHINGTON, et.al.

Defendants.

JUDGMENT

CIV 85-1451PHX-RGS

This action came on for hearing before the Court, the Honorable Roger G. Strand, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendants', Mary A. Tichy and GTE Communication Systems Corporation, Motion to Dismiss having been granted by the Court on March 7, 1986, that petitioner take nothing and the action is hereby dismissed.

Dated at Phoenix, Arizona, this 23rd day of May, 1986.

Richard H. Weare, Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL B. BRANSON,
Plaintiff-Appellant

vs.

CORA NORTHINGTON, et.al.
Defendants-Appellees.

MEMORANDUM*

No. 86-1786

CIV 85-1451PHX-RGS

Appeal from the District Court
for the District of Arizona
Hon. Roger G. Strand, District Judge,
Presiding

Submitted December 2, 1986**

Before: WALLACE, HUG, and KOZINSKI,
Cicuit Judges

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Cir. R. 3(f).

Carl Branson appeals from the dismissal of his suit against the United States, several employees of the Internal Revenue Service, his employer GTE Communication Systems Corp. (GTE), and a GTE employee. The IRS assessed penalties against Branson for filing frivolous tax returns. After Branson failed to pay the penalties, the IRS levied upon his wages pursuant to 26 U.S.C. 6331 (1982 & Supp. 1986). GTE, through its employee, defendant Tichy, complied with the levy. Branson sued for damages for the wages paid pursuant to the levy and sought an injunction against collection of the penalties. The district court dismissed the suit for lack of subject matter jurisdiction and for failure to state a claim. Branson appeals.

Discussion

We have no jurisdiction over the appeal against GTE and Tichy. The district court dismissed Branson's suit against the federal defendants on January 2, 1986. Branson filed a notice of appeal from that order on February 25, 1986. The district court dismissed the suit against GTE and Tichy on May 23, 1986. Branson did not file a notice of appeal from that judgment. Consequently, the May 23 judgment is not on appeal, although it did render the January 2 judgment final and appealable. See Anderson v. Allstate Ins. Co., 630 F.2d 677, 680-681 (9th Cir. 1980).

The district court correctly dismissed Branson's claims against the federal defendants for lack of subject matter jurisdiction. The Anti-Injunction Act, which prohibits any suit "for the purpose of restraining the assessment or collection of any tax . . . by any

person," bars injunctive relief. 26 U.S.C. 7421 (1982). Branson's contention that this provision does not apply because penalties are not taxes is meritless. The Internal Revenue Code defines taxes to include penalties assessed under Title 26. 26 U.S.C. 6671(a) (1982). See Shaw v. United States, 331 F.2d 493, 496 (9th Cir. 1964).

Branson's claim for damages against the federal defendants is barred by the doctrine of qualified immunity. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). As governmental officials performing the discretionary function of collecting penalties authorized by statute, they ar immune from liability for damages.

Branson contends that 26 U.S.C. 6331 authorizes levies only on the wages of government employees and is therefore inapplicable to him. Section 6331,

however, provides for levy upon "all property" belonging to "any person" who fails to pay "any tax." See Sims v. United States 359 U.S. 108, 112 (1959). A warrant of distraint was not required, see 26 U.S.C. 6331 (1982 & Supp. 1986), nor was a prior hearing. Commissioner v. Shapiro, 424 U.S. 614, 630 n.12 (1976).

Branson's arguments on appeal are frivolous. To punish and deter this waste of the court's and the appellees' resources, we award $500 plus double costs to the federal appellees and an equal amount to appellees GTE and Tichy. Fed. R. App. P. 38; Trohimovich v. Commissioner, 776 F.2d 873, 875 (9th Cir. 1985).

AFFIRMED.

Dated December 31, 1986

Kozinski, Hug, and Wallace, Circuit Judges

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL B. BRANSON,
Plaintiff-Appellant

vs.

CORA NORTHINGTON, PRESCOTT BERRY, ROGER STEELE, ROSCOE EGGER, MARY A. TICHY, GTE COMMUNICATION SYSTEMS CORP., UNITED STATES OF AMERICA
Defendants-Appellees

NOTICE OF APPEAL

No. 86-1786

In compliance with United States Supreme Court Rules 10, 11, and 28, and 28 USC 2101, Notice is hereby given that the decision filed by the Clerk of this court on January 7, 1987 is appealled to the United Stated Supreme Court.

Dated this 5th day of February, 1987

Respectfully Submitted,

Carl B. Branson
In Propria Persona

26 USC 6331

LEVY AND DISTRAINT

(a) AUTHORITY OF SECRETARY.--If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawfull for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) SEIZURE AND SALE OF PROPERTY.-- The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (d)(3), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon

property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) SUCCESSIVE SEIZURES.-- Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, therafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) SALARY AND WAGES.--

(1)IN GENERAL.-- Levy may be made under subsection (a) upon the salary or wages of an individual with respect to any unpaid tax only after the Secretary has notified such individual in writing of his intention to make such levy. Such notice shall be given the person, left at the dwelling or usual place of business of such individual, or shall be sent by mail to such individual's last known address, no less than 10 days before the day of the levy.

(2) JEOPARDY.-- Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(3) CONTINUING LEVY ON SALARY AND WAGES.

(A) EFFECT OF LEVY.-- The effect of a levy on salary or wages payable to or

received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time.

(B) RELEASE AND NOTICE OF RELEASE.--With respect to a levy described in subparagraph (A), the Secretary shall promptly release the levy when the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, and shall promptly notify the person upon whom such levy has been released.

(e) CROSS REFERENCES.--

(1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceeding applicable to sale of seized property, see section 6335.

26 USC 6332

SURRENDER OF PROPERTY SUBJECT TO LEVY

(a) REQUIREMENT.-- Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) SPECIAL RULE FOR LIFE INSURANCE AND ENDOWMENT CONTRACTS.--

(1) IN GENERAL.-- A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary for payment of the amount described in paragraph (2) and the execise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) SATISFACTION OF LEVY.-- Such levy shall be deemed to be satisfied if such organization pays over to the Secretary the amount which the person against whom

the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) ENFORCEMENT PROCEEDING.-- The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

26 USC 6671

RULES FOR APPLICATION OF ASSESSABLE PENALTIES

(a) PENALTY ASSESSED AS TAX.-- The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) PERSON DEFINED.-- The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership who as such officer, employee, or member is under duty to perform the act in respect of which such violation occurs.

STATUTE 26 USC 6702

FRIVOLOUS INCOME TAX RETURNS

(a) CIVIL PENALTY.--If--

(1) any individual files what purports to be a return of the tax imposed by subtitle A but which--

(A) does not contain information on which the substantial correctiness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self- assessment is substantially incorrect; and;

(2) the conduct referred to in paragraph (1) is due to--

(A) a position which is frivolous, or

(B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws. then such individual shall pay a penalty of $500.

(b) PENALTY IN ADDITION TO OTHER PENALTIES.--The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

STATUTE 26 USC 6703

RULES APPLICABLE TO PENALTIES UNDER SECTIONS 6700, 6701, AND 6702

(a) BURDEN OF PROOF.-- In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

(b) DEFICIENCY PROCEDURES NOT TO APPLY.-- Subchapter B of chapter 63 (relating to deficiency procedures) shall not apply with respect to the assessment or collection of the penalties provided by sections 6700, 6701, or 6702.

(c) EXTENSION OF PERIOD OF COLLECTION WHERE PERSON PAYS 15 PERCENT OF PENALTY.--

(1) IN GENERAL. -- If, within 30 days after the day on which notice and demand of any penalty under section 6700, 6701, or 6702 is made against any person, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of setion 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(2) PERSON MUST BRING SUIT IN DISTRICT COURT TO DETERMINE HIS LIABILITY FOR PENALTY.-- If, within 30 days after the day on which his claim for refund of any patial payment of any penalty under section 6700, 6701, or 6702 is denied (or, if earlier, within 30 days after the expiration of 6 months after the day on which he filed the claim for refund), the person fails to begin a proceeding in the appropriate United States district court for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

(3) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.-- The running of the period of limitations provided in section 6502 on the collection by levy or by proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or proceeding in court.

26 USC 7421

PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION

(a) TAX.-- Except as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) LIABILITY OF TRANSFEREE OR FIDUCIARY.- No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of --

(1) the amount of liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of any such tax.

26 USC 7423

REPAYMENTS TO OFFICERS OR EMPLOYEES

The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay--

(1) COLLECTIONS RECOVERED.-- To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) DAMAGES AND COSTS.-- All damages and costs recovered against any officer or employee of the United States in any suit brough against him by reason of anything done in the due performance of his official duty under this title.

26 USC 3690

AUTHORITY TO DISTRAIN

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest, and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid.

26 USC 3692

LEVY

In the case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

26 USC 3710

SURRENDER OF PROPERTY SUBJECT TO DISTRAINT

(a) REQUIREMENT.-- Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) PENALTY FOR VIOLATION.-- Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) PERSON DEFINED.-- The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee, or member is under duty to perform the act in respect of which the violation occurs.

CONSTITUTIONAL PROVISIONS

ARTICLE I SECTION 6, CLAUSE 1

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

ARTICLE I SECTION 6, CLAUSE 2

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

ARTICLE I SECTION 8, CLAUSE 17

[Congress shall have power] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; -- And

ARTICLE I SECTION 8, CLAUSE 18

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

ARTICLE I SECTION 9, CLAUSE 7

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

ARTICLE I SECTION 10, CLAUSE 1

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bill of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

RULE 54

JUDGMENT

(a) DEFINITION; FORM. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) JUDGMENT UPON MUTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absense of such determination and direction, any order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) DEMAND FOR JUDGMENT. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) COSTS. Except when express provision therefor is made either in a statute of

the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

Supreme Court, U.S.
FILED
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No. 86-1669

In The

Supreme Court of the United States

October Term, 1986

CARL B. BRANSON,

Appellant,

vs.

CORA NORTHINGTON, PRESCOTT BERRY, ROGER STEELE, ROSCOE EGGER, GTE COMMUNICATION SYSTEMS CORP., MARY A. TICHY, UNITED STATES OF AMERICA,

Appellees.

On Appeal From the United States Court of Appeals For the Ninth Circuit

Brief in Opposition of Appellees GTE Communication Systems and Mary A. Tichy

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JURISDICTION

This was an action to enjoin tax collection by garnishment, with related claims. The Arizona District Court on January 2, 1987 gave judgment for the government and on May 23, 1986 for the employer (GTE and Tichy) who obeyed the garnishment. Appellant appealed the January 2 order to the Circuit as to the government defendants but never appealed the May 23 order giving judgment for GTE and Tichy.

The Ninth Circuit Court of Appeals found that it had no jurisdiction as to GTE and Tichy because there had been no notice of appeal to it. It found the appeal as to the federal defendants frivolous and affirmed on January 7, 1987. The complainant filed a notice of appeal here on February 9, 1987.

This Court has no jurisdiction of this application as an appeal, 28 U.S.C. § 1254(2), but can treat it as a petition for certiorari under 28 U.S.C. § 2103; we shall so treat it here.

REASONS FOR DENYING THE WRIT AS TO THE EMPLOYER PARTIES

The court below found that it had no jurisdiction to consider the appeal to it relating to GTE and Tichy (the employer parties), for lack of a notice of appeal and decided nothing but that jurisdictional question as to these parties. The petition here gives no grounds at all as to why that jurisdictional determination should be further reviewed.

There was, in short, nothing to decide as to these parties in the court below, there is nothing to decide here, and the petition as to these parties should be denied.

Respectfully submitted,

April, 1987

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